



38 CFR Part 17

RIN 2900-AQ70

Medical Benefits Package; Chiropractic Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations to add chiropractic services to the definitions of medical services and preventive care. VA will further revise the definition of medical services to include rehabilitative services consistent with its statutory definition and to reflect changes made in other VA medical regulations and in prior legislation not previously codified. The amendments will make the amended regulations consistent with current practices, prior changes in law and other VA medical regulations, and changes in law made by the Consolidated Appropriations Act, 2018. These amendments will not substantively change the current administration of medical benefits to veterans.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Anthony Lisi, D.C., Director, Veterans Health Administration Chiropractic Service, Rehabilitation and Prosthetic Services (12RPS3), 810 Vermont Ave. NW, Washington, DC 20420, (203) 932-5711, ext. 5341. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 21, 2021, VA published a proposed rule in the **Federal Register** (86 FR 58237) that would revise its medical regulations to explicitly include chiropractic and rehabilitative care. VA provided a 60-day comment period, which ended on December 20, 2021. VA received six comments on the proposed rule.

Section 1710 of title 38 of the United States Code (U.S.C.) requires VA to furnish hospital care and medical services which the Secretary determines to be needed for eligible veterans. The term medical services is defined in 38 U.S.C. 1701(6) to include medical examination, treatment, and rehabilitation, and further lists particular types of medical services in section 1701(6)(A)-(H). Section 245 of Public Law 115–141, the Consolidated Appropriations Act, 2018 (March 23, 2018), amended 38 U.S.C. 1701(6) to add chiropractic services to the definition of medical services, amended section 1701(8) to include chiropractic services to the definition of rehabilitative services, and amended section 1701(9) to add chiropractic examinations and services to the definition of preventive services. VA regulates definitions for certain terms, to include medical services, in title 38 Code of Federal Regulations (CFR) 17.30, and regulates the provision of hospital care and medical services in 38 CFR 17.38. This final rule amends 38 CFR 17.30 and 17.38, consistent with the proposed rule, to conform to these statutory changes and expressly recognize chiropractic services as medical services.

All six comments—including one submitted by the American Chiropractic Association, the largest professional organization representing chiropractors in the U.S.—expressed support for the rule, and we thank the commenters for their support. While all comments were supportive, four warrant clarification.

One commenter is a chiropractor working with veterans who expressed a personal desire, as well as a desire held by the commenter's patients, to see chiropractic care covered as part of veteran medical benefits. We believe this commenter supported the addition of chiropractic services as part of the medical benefits package in proposed § 17.38(a)(2)(x) but may not have understood that chiropractic services have been provided by VA to veterans since 2000. We clarify for the commenter, and reiterate from the proposed rule, that the proposed changes are intended to expressly recognize chiropractic services as medical services available to

veterans, making VA regulations consistent with changes in law made by the Consolidated Appropriations Act of 2018 as well as with current VA practice. The proposed changes will not affect the administration of medical benefits, which currently include chiropractic services. We do not make any changes based on this comment.

While voicing support for the proposed rule, one commenter stated the change does not go far enough, because it does not include other “whole-person” medical treatments and methodologies such as osteopathic manipulation, physical therapy, and massage therapy. The commenter recommended listing these three modalities alongside chiropractic care as covered preventive care services under 38 CFR 17.38(a)(2)(x). VA embraces whole health by offering various complimentary and integrative health approaches and promoting veteran self-care and well-being. However, the primary purpose of this rulemaking is to conform § 17.38 with the statutory changes made to 38 U.S.C. 1701 in the Consolidated Appropriations Act, 2018, and not to conform VA regulations to reflect an exhaustive list of all treatment modalities that may be available as either basic or preventive care in the medical benefits package in § 17.38(a). We clarify for the commenter, however, that the additional modalities mentioned by the commenter are currently authorized forms of outpatient care for veterans under § 17.38(a)(1)(i), dependent upon factors like provider availability and medical necessity. We do not make any changes from the proposed rule based on this comment.

A supportive comment submitted by a group of graduate students stated a belief that VA currently provides only limited chiropractic services and that the proposed rule would authorize additional chiropractic resources for veterans through the hiring of additional chiropractors. To clarify, the proposed rule did not pose regulatory revisions to increase chiropractic resources or services, but only to conform current regulatory language to the authorizing statutory language and current VA practice. Chiropractic

resources are already available at VA medical centers and through the Community Care Program.

In the group comment referenced above, one individual commenter also stated that while they supported the rule and did not find any issue with VA providing chiropractic care prior to the regulations being published and effective, the commenter suggested that, in the future, VA should not authorize new types of treatment or care without first, or simultaneously, publishing a regulation. We thank the commenter for that suggestion. However, in some situations VA is able to administer medically necessary benefits to veterans as soon as they are authorized without having to wait for regulations to be published.

The commenter detailed their own experience serving on active duty and as a veteran receiving health care through VA, and we thank the commenter for their service. We do not make any changes from the proposed rule based on this comment.

One commenter expressed support for making chiropractic services available in nursing homes, a term which could apply to various VA-run and VA-affiliated programs, such as: Community Living Centers, which are VA-run nursing homes; Community Nursing Homes, which are nursing homes owned and operated by commercial providers where VA contracts for beneficiary care; and State Veterans Homes, which are recognized by VA, but owned and operated by the state where they are located. While chiropractic care is available to veterans eligible for the medical benefits package, we note that these services may not be available on-site at each type of nursing home to which the commenter may have been referring.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule without changes.

Paperwork Reduction Act

This action does not contain any provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. There would be no material changes to the medical benefits available to veterans. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Assistance Listings

The Assistance Listings numbers and titles for the programs affected by this document are 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.029, Purchase Care Program; 64.049, VHA Community Living Center.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Day care, Dental health, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 14, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

*Assistant Director,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.*

For the reasons set forth in the preamble, we amend 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 is amended by adding an entry for § 17.30 and revising the entry for §17.38 to read in part as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

Section 17.30 is also issued under 38 U.S.C. 1701.

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Section 17.38 is also issued under 38 U.S.C. 1701 and 1703.

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2. Amend §17.30 by:

a. Revising paragraphs (a) introductory text and (a)(1);

b. Redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4),
respectively; and

c. Adding new (a)(2) to read as follows:

§ 17.30 Definitions.

* * * * *

(a) *Medical services.* The term *medical services* includes the following:

(1) Medical examination, treatment, and rehabilitative services (as defined in 38 U.S.C. 1701(8)).

(2) Surgical services, dental services and appliances as authorized in §§17.160 through 17.166, optometric and podiatric services, chiropractic services, preventive health care services set forth in 38 U.S.C. 1701(9), noninstitutional extended care, and items and services as authorized in §§ 17.3200 through 17.3250.

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3. Amend §17.38 by adding paragraph (a)(2)(x) to read as follows:

§ 17.38 Medical benefits package.

(a) * * *

(2) * * *

(x) Chiropractic services.

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